

Message Text

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ORIGIN EB-07

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DRAFTED BY EB/OA:MHSTYLES:TP

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R 152204Z MAY 75

FM SECSTATE WASHDC

TO AMEMBASSY PARIS

AMEMBASSY BONN

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FOLLOWING REPEAT STATE 112524 SENT ACTION LONDON DTD 14 MAY 75

QUOTE:

C O N F I D E N T I A L

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: CIVAIR - PAN AM COMMISSION PROBLEM

REF : LONDON 7132, 7267

1. UNLESS EMBASSY SEES SERIOUS OBJECTIONS, IT SHOULD
DELIVER NOTE TO FOREIGN OFFICE AT HIGH LEVEL ASAP
SUBSTANTIALLY ALONG FOLLOWING LINES.

BEGIN TEXT: REFERENCE IS MADE TO THE MATTER OF SALES
COMMISSIONS PAID BY PAN AMERICAN WORLD AIRWAYS AND
PARTICULARLY TO THE LETTER FROM DOT TO PAA DATED
MAY 2, WHICH, EFFECTIVE MAY 5, VARIED PAN AM'S OPER-
ATING PERMITS TO REQUIRE THAT IT ADHERE TO A SPECIFIED
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COMMISSION LEVEL PAYABLE TO PASSENGER SALES AGENTS

ON ALL AIR SERVICES OPERATED TO OR FROM THE UK.
A SUBSEQUENT DOT LETTER OF MAY 8 THREATENS TO REVOKE
OR SUSPEND PAA'S OPERATING PERMITS IF IT DOES NOT
COMPLY WITH THE FOREGOING CONDITION.

IT IS THE VIEW OF THE USG THAT THE AIR SERVICES AGREEMENT
CANNOT BE CONSTRUED AS GRANTING ONE COUNTRY THE
RIGHT TO REGULATE THE LEVEL OF COMMISSIONS PAID BY
AN AIRLINE OF THE OTHER COUNTRY OUTSIDE THE TERRITORY

OF THE FIRST COUNTRY. COMMISSIONS ARE NOT RATES WITHIN
THE MEANING OF ANNEX II OF THE AGREEMENT SINCE THEY
INVOLVE ARRANGEMENTS SOLELY BETWEEN THE COMPANY PROVIDING
A TRANSPORTATION SERVICE AND OTHER BUSINESS ENTERPRISES
ACTING AS AGENTS FOR THE COMPANY. THE VARIATION
ATTACHED TO PAN AM'S OPERATING PERMITS AMOUNTS TO
AN ATTEMPT BY THE BRITISH GOVERNMENT TO EXERCISE
ITS SOVEREIGNTY OVER PRIVATE BUSINESS ARRANGEMENTS
BETWEEN A U.S. AIRLINE AND OTHER BUSINESS ENTERPRISES
IN U.S. TERRITORY AND IN THE TERRITORY OF COUNTRIES
OUTSIDE THE UK. ANY ATTEMPT BY THE BRITISH AUTHORITIES
TO IMPLEMENT THE PROVISIONS OF THE VARIATION, IN
SO FAR AS TRANSACTIONS OUTSIDE UK TERRITORY ARE CONCERNED,
WOULD BE A VIOLATION OF THE AIR SERVICES AGREEMENT.
THE USG, THEREFORE, ASSERTS THAT THE VARIATION IN
PAN AM'S PERMITS, IN SO FAR AS IT INVOLVES SALES
TRANSACTIONS OUTSIDE UK TERRITORY, IS IMPROPER, AND
THAT IT SHOULD BE REVISED ACCORDINGLY.

THE THREAT TO REVOKE OR SUSPEND PAN AM'S OPERATING
RIGHTS COULD GIVE RISE TO MOST SERIOUS CONSEQUENCES,
NOT ONLY FOR AIRLINES DESIGNATED UNDER THE AIR SERVICES
AGREEMENT BUT ALSO FOR THE TRAVELING PUBLIC WHICH
DEPENDS SO HEAVILY ON THE EXISTENCE OF AIR TRANSPORT
LINKS BETWEEN THE TWO COUNTRIES.

IN VIEW OF SIGNIFICANCE OF THE ISSUES INVOLVED, THE
USG TRUSTS THAT THE BRITISH GOVERNMENT WOULD NOT
CONTEMPLATE TAKING ANY FURTHER UNILATERAL ACTION
IN THIS MATTER WITHOUT FULL PRIOR CONSULTATIONS WITH
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THE USG IN KEEPING WITH THE LETTER AND SPIRIT OF
THE AIR SERVICES AGREEMENT. IT WOULD APPRECIATE
RECEIVING PROMPT ASSURANCES TO THIS EFFECT. END
TEXT.

2. IN DELIVERING NOTE, EMBASSY SHOULD INDICATE OUR
VIEW THAT IT IS IMPORTANT TO DEFUSE THIS MATTER AS
QUICKLY AS POSSIBLE. TRAVEL AGENTS AND PAN AM EMPLOYEES

ARE MOUNTING PROTESTS AGAINST THE UK ULTIMATUM AND ANTITRUST SUITS AGAINST CARRIERS OBSERVING THE 7.5 PERCENT RATE ARE POSSIBLE ABSENT BOARD APPROVAL OF A CARRIER AGREEMENT TO MAINTAIN THAT RATE. THIS SORT OF PUBLICITY CAN GET OUT OF HAND AND CAN MAKE AN EVENTUAL SOLUTION MUCH MORE DIFFICULT. WE HAVE ALREADY BEEN ASKED BY ONE REPORTER WHETHER WE WOULD RETALIATE AGAINST CONCORDE; OF COURSE WE RESPONDED WITH A CATEGORICAL NEGATIVE. IF THE BRITISH WERE TO WITHDRAW THEIR ULTIMATUM IN RESPECT TO NON-UK SALES, IT WOULD STILL LEAVE THEM THE OPPORTUNITY

TO PRESS THE MATTER WITH US IN CONSULTATIONS IF IN REALITY USE OF THE PAA INCENTIVE PLAN IN THE U.S. PROVES TO BE A SERIOUS PROBLEM. IT WOULD APPEAR

LIKELY THAT IN FACT MOST OTHER COUNTRIES WOULD PROHIBIT THE PAA PLAN AT LEAST WITHIN THEIR JURISDICTIONS. EVEN IN THE U.S. WE ARE NOT CERTAIN HOW PAA'S PLAN WILL FARE. THE CAB HAS ASKED PAA FOR SOME EXPLANATION OF ITS SALES COMMISSION POLICY. WE DO NOT KNOW WHERE THIS WILL LEAD SINCE AS INDICATED IN PARA 3 BELOW THE BOARD DOES NOT CONSIDER THAT IT HAS AUTHORITY TO REGULATE SALES COMMISSIONS. HOWEVER, WE BELIEVE THAT IT IS MORE LIKELY THAT THE ISSUE WILL RESOLVE ITSELF IF THE EMOTIONAL ULTIMATUM APPROACH IS NOT USED.

3. EMBASSY MAY ALSO DRAW ON FOLLOWING, AS APPROPRIATE, IN RESPONDING TO POINTS RAISED BY DOT AND OTHER OFFICIALS:

A. CAB DOCKET NO. 8873 OF JULY 15, 1958 (COPY POUCHED) IS NOT HELPFUL TO THE BRITISH POSITION THAT SALES LIMITED OFFICIAL USE

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COMMISSIONS ARE IN THE NATURE OF RATES. IN THAT CASE, THE CHARGE WAS THAT PAA HAD SECRETLY VIOLATED AN IATA AGREEMENT ON COMMISSION RATES BY PAYING COMMISSIONS TO SEVERAL U.S. TRAVEL AGENTS IN EXCESS OF THOSE SPECIFIED IN THE IATA AGREEMENT APPROVED BY CAB AND THAT THIS WAS UNFAIR COMPETITION UNDER SECTION 411 OF THE FAA. ONE BOARD MEMBER SPECIFICALLY OBJECTED TO INVOLVING THE BOARD "IN MINOR VIOLATIONS OF A PRIVATE, NON-TARIFF IATA AGREEMENT." ALTHOUGH THIS WAS A DISSENT, THE SENSE OF THE MAJORITY DOES NOT CONFLICT WITH HIS CONCLUSION THAT THIS WAS A "PRIVATE, NON-TARIFF" AGREEMENT. IN THE CURRENT SITUATION, THERE IS NO IATA AGREEMENT IN EFFECT (DESPITE UK ATTEMPTS TO ARGUE OTHERWISE) AND THERE HAS BEEN NO ALLEGATION THAT PAN AM IS NOT PAYING THE INCENTIVE

COMMISSION LEVELS IN THE U.S. IT HAS ANNOUNCED. THERE IS THEREFORE NO APPARENT IMPROPRIETY ON PART OF PAN AM WHICH MIGHT GIVE RISE TO ENFORCEMENT OR OTHERS LEGAL ACTION BY CAB. THERE IS NO STATUTORY BASIS FOR CAB TO APPROVE, DISAPPROVE, FIX OR SUSPEND COMMISSION RATES.

B. IN VIEW PARA A ABOVE, CAB CANNOT REQUIRE PAN AM OFFER ANY PARTICULAR COMMISSION LEVEL AS DOT HAS PROPOSED. IT ALSO FOLLOWS, THEREFORE, THAT U.S. CANNOT ACCEPT DOT PROPOSAL THAT PAN AM OFFER 7.5 PERCENT PENDING CONSULTATIONS. WE MUST INSIST, ON THE CONTRARY, THAT UK NOT ACT UNILATERALLY AGAINST PAN AM PENDING CONSULTATIONS. KISSINGER

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